IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 29.03.2021
CORAM:
THE HON'BLE MR. JUSTICE M.DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

T.C.A.No.244 of 2014

The Commissioner of Income Tax VIII,
121, Mahatma Gandhi Salai,
Chennai - 600 034. ... Appellant

Vs.

M/s.Habeeb Tanning Company,
Railway Station Road,
Ammanankuppam Village,
Gudiyatham, R.S.Post,
Gudiyatham. ... Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "C" Bench, dated 18.11.2013 in I.TA.No.1028/Mds/2013 for the assessment year 2004-05 against the Commissioner of Income Tax Appeals-IX, No.121, Mahatma Gandhi Road, Chennai - 600 034 dated 28/03/2013 in ITA No.228/10-11, PAN No.AAAFHO373B in assessment year 2004-2005 against The Deputy Commissioner of Income Tax Circle-I, Vellore-PAN No.AAAFHO373B/11311-H in Assessment year 2004-2002.

For Appellant : Mrs.V.Pushpa,
Standing Counsel

For Respondent : Mr.K.M.Aasim Shehzad

JUDGMENT
(Judgment was delivered by M.DURAISWAMY, J.)

Challenging the order passed in I.TA.No.1028/Mds/2013 in respect of the assessment year 2004-05 on the file of the Income Tax Appellate Tribunal, Chennai, "C" Bench, the Revenue has filed the above appeal.

2.The appellant has raised the following substantial questions of law in the grounds of appeal:

> “1)Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that there was no justification for the Assessing Officer to reopen the assessment and bring to tax sale proceeds of DEPB/DFRC licenses which was amended retrospectively?

2)Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the re-assessment is bad in law, when there is failure on the part of assessee to disclose fully and truly the details of claim of deduction u/s 80 HHC of the Act?"

3.The issue involved in the present appeal is regarding taxability of proceeds generated in the hands of the assessee on sale of DEPB/DFRC entitled to it as an exporter.

4.The assessment was originally completed under Section 143 (3) of the Income Tax Act and according to the assessee, all the details have been furnished by the assessee at the first instance in the course of assessment proceedings under Section 143 (3). The re-opening was resorted to only for the reason of amendment brought in by the Amendment Act as to the taxability of the proceeds from the sale of DEPB/DFRC. In the case on hand, re-opening was made after the expiry of four years from the end of relevant previous year.

5.The learned counsel appearing for the respondent – assessee submitted that the first question of law raised in the above appeal is covered by the decision of the Hon'ble Supreme Court reported in [2012] 19 taxmann.com 25 (SC) [Vikas Kalra Vs. Commissioner of Income Tax-VIII, New Delhi], wherein the Hon'ble Supreme Court held as follows:

> "...
>
> 3.The facts very briefly are that the appellant is engaged in manufacturing and exporting leather garments. For the assessment years 2001-2002 and 2004-2005, the appellant filed returns of income claiming deductions in respect of profits retained for export business under Section 80HHC of the Income Tax Act, 1961 (for short `the Act'). The Assessing Officer held in the assessment orders that the entire sale value of Duty Entitlement Pass Book (for short `DEPB') represents profit on transfer of DEPB under Section 28 (iiid) of the Act and did not allow the amount of deduction claimed by the appellant under Section 80HHC. The appellant filed appeals before the Commissioner of Income Tax (Appeals) but the Commissioner of Income Tax (Appeals) sustained the orders of the Assessing Officer. The appellant filed appeals before the Income Tax Appellate Tribunal (for short `the Tribunal') and the Tribunal following the order dated 11.08.2009 of the Special Bench of the Tribunal at Mumbai in the case of Topman Exports v. ITO [2009] 33 SOT 337/ [2010] 124 ITD 1 (Mum.) (SB) allowed the appeals and held that the

face value of the DEPB will be `cash assistance' against export and will fall under Section 28(iiib) of the Act and the sale value less the face value of the DEPB will be profit on transfer of DPB and will fall under Section 28(iiid) of the Act.

4.Aggrieved, the Revenue preferred the appeals ITA No.185 of 2011 in respect of assessment year 2001-2002 and ITA No.308 of 2011 in respect of assessment year 2004-2005 before the Delhi High Court against the orders of the Tribunal. In both the appeals, the High Court held in the impugned orders that the Tribunal simply followed the decision of the Special Bench of the Tribunal at Mumbai in Topman Exports (supra) and the decision of the Special Bench in Topman Exports (supra) has been reversed by the Bombay High Court in CIT v. Kalpataru Colours and Chemicals [2010] 192 Taxman 435. The High Court accordingly set aside the orders of the Tribunal and remitted the case to the Tribunal to decide the appeals of the appellant on merits after taking into account the facts of the cases. In ITA No.308 of 2011, an additional issue raised before the High Court was whether the Tribunal was correct in law in ignoring Explanation (baa) under Section 80HHC of the Act which specially excludes profits of DEPB from total turnover and the High Court held that this issue was covered by its judgment in the case of CIT v. Shri Ram Honda Power Equip [(2007) 289 ITR 475/158 Taxman 474 (Delhi)].

5.We have today delivered judgment in Civil Appeal arising out SLP (C) No.26558 of 2010 Topman Exports v. Commissioner of Income Tax and other connected appeals setting aside the judgment of the Bombay High Court in Kalpataru Colours and Chemicals (supra). We have also delivered a separate judgment in Civil Appeal arising out of S.L.P.(C) No.32450 of 2010 ACG Associated Capsules (P) Ltd v. CIT [2012] 18 Taxmann.com 137 (SC) and other connected appeal affirming the judgment of the Delhi High Court in Shri Ram Honda Power Equip (supra). These two appeals are disposed of in terms of our aforesaid two judgments. There shall be no order as to costs."

6.On a reading of the decision of the Hon'ble Supreme Court, cited supra, it is clear that the first question of law raised in the above appeal was decided in favour of the assessee and against the Revenue.

7.The learned standing counsel appearing for the appellant – Revenue has not produced any contra judgment.

8.In view of the ratio laid down by the Hon'ble Supreme Court in the judgment [2012] 19 taxmann.com 25 (SC) [Vikas Kalra Vs. Commissioner of Income Tax-VIII, New Delhi], cited supra, we are of the considered view that the first question of law should be decided in favour of the assessee and against the Revenue. Accordingly, the first question of law is decided against the Revenue and in favour of the assessee.

9.The learned standing counsel appearing for the appellant - Revenue submitted that since this Court had decided the first question of law in favour of the assesee in view of the judgment of the Hon'ble Supreme Court, cited supra, the second question of law has become redundant.

10.In view of the submission made by the learned standing counsel appearing for the appellant, the second question of law has become redundant and the appeal is liable to be dismissed. Accordingly, the Tax Case Appeal is dismissed. No costs.

Sd/-
Assistant Registrar (CS III)

/TRUE COPY/

Sub-Assistant Registrar

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To
1.The Income Tax Appellate Tribunal, Chennai, "C" Bench

2.The Commissioner of Income Tax,
No.121, Mahatma Gandhi Road,
Chennai 600 034

3.The Deputy Commissioner of Income Tax Circle-1,
Vellore.

+1cc to M/s.M.SWAMINATHAN, ADVOCATE, SR.NO. 20522
+1cc to Mr.BFS LEGAL, ADVOCATE, SR.NO. 20114

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VSN II(CO)
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